TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~566.~~ 80

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMSHIP MANHATTAN, HER ENGINES, ETC.—THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 12, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 506.

THE UNITED STATES, APPELLANTS,

vs.

THE STEAMSHIP MANHATTAN, HER ENGINES, ETC.—THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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A UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to forty-two, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of the United States, lib'l'ts & app'l'ts, against the steamship Manhattan, cl'nts & appellees, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this ninth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independence of the said United States the ninety-fourth.

[SEAL] KENNETH G. WHITE, *Clerk.*

[Five-cent int. rev. stamp, canceled.]

1 District court of the United States of America for the southern district of New York.—Of December term, in the year one thousand eight hundred and sixty-seven.—Before the Honorable Samuel Blatchford, the district judge.

On the third day of December, one thousand eight hundred and sixty-seven, comes Samuel G. Courtney, as the attorney for the United States in the said southern district of New York, to persecute a civil action, in which the United States are concerned, and informs the court—

That the United States bring suit herein against the steamship Manhattan, her engines, tackle, apparel, and furniture, being within said district, for forfeitures incurred under the laws of the United States; and propounded in the following articles:

First. That during the period from December, 1866, to the date hereof, the said Manhattan has been owned, in whole or in part, by a citizen of the United States, or by a citizen of a foreign country; and has been employed during such time by said owner, and by the master thereof, in the carriage of passengers from Liverpool and Queenstown, foreign ports, or place other than foreign contiguous territory of the United States, to the port of New York, under the provisions of the act of Congress approved March 3d, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels."

Second. That during the said period and employment of said vessel as aforesaid, and at the several times and at the places hereinafter mentioned, the said Manhattan had berths for the use and occupation of passengers which were not well constructed, and were not separated from each other by partitions, as berths ordinarily are separated, and which were not then and there each at least six feet in length, and at least two feet in width; and that said vessel then and there had berths, or enclosed platforms used as berths, which were six feet in length by ten $\frac{5}{10}$ feet in width, and which were then and there occupied by more and other than two women, or by one woman and two children under the age of eight years, or by husband and wife, or by a man and two of his own children under the age of eight years, or by two men, members of the same family; all of which was then and there contrary to the second section of the said act of Congress aforesaid.

Third. That on or about the 1st day of January, 1867, the master of said Manhattan took on board such vessel at said foreign ports two hundred and thirty-eight passengers, with intent to bring such passen-

gers to the United States; and, having left said places with said passengers in said vessel, did, on the 14th day of January, 1867, bring the same in said vessel into the port of the city of New York; and that during such voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby the said master of said vessel and the owners thereof did severally forfeit for each violation aforesaid of each of the said provisions of said section of
2 said act, the sum of five dollars for each passenger on board of said vessel on such voyage; and that the total amount thereby forfeited, to be recovered by the United States therefor, is seven thousand one hundred and fourty dollars.

Fourth. That on or about the 13th day of February, 1867, the master of said Manhattan took on board such vessel at said foreign ports two hundred and fifty-two passengers, with intent to bring said passengers to the United States, and having left said places with said passengers in said vessel, did, on the 1st day of March, 1867, bring the same in said vessel into the port of the city of New York; and that during such voyage the berths of said passengers were constructed and occupied as in the second article herein is charged contrary to the said section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue; and that the total amount thereby forfeited for said last-mentioned voyage to be recovered by the United States, is seven thousand five hundred and sixty dollars.

Fifth. That on or about the 1st day of April, 1867, the master of said Manhattan took on board such vessel at said foreign ports aforesaid five hundred and twenty-six passengers, with intent to bring such passengers to the United States, and having left said place with said passengers in said vessel, did, on the 12th day of April, 1867, bring the same in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers were constructed and occupied as in the second article herein is charged, contrary to the said second section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue; and that the total amount thereby forfeited for said last-mentioned voyage is fifteen thousand seven hundred and eighty dollars.

Sixth. That on or about the 10th day of May, 1867, the master of said Manhattan, took on board said vessel at said foreign ports one thousand and twenty-nine passengers, with intent to bring such passengers to the United States, and having left said places with said passengers in said vessel, did, on the 23d day of May, 1867, bring the same in said vessel into the port of the city of New York; and that during such voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue; and that the total amount so thereby forfeited for said last-mentioned voyage, to be recovered, is thirty thousand eight hundred and seventy dollars.

Seventh. That on or about the 20th day of June, 1867, the master of said Manhattan took on board said vessel at said foreign ports aforesaid one thousand and twenty-four passengers, with intent to bring such passengers to the United States, and having left said places with said passengers in said vessel, did, on the 4th day of July, 1867, bring the same in said vessel into the port of the city of New York; and that during such voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged,

contrary to the said section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue; and that the total amount thereby forfeited for said last mentioned voyage is thirty-two thousand eight hundred and seventy dollars.

Eighth. That on or about the 20th day of August, 1867, the master of said Manhattan took on board said vessel at said foreign ports six hundred and ninety passengers, with intent to bring such passengers to the United States, and having left said place with said passengers in said vessel, did, on the 2d day of September, 1867, bring the same in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue;

3 and that the total amount thereby forfeited for said last-mentioned voyage is twenty thousand seven hundred dollars.

Ninth. That on or about the 10th day of November, 1867, the master of said Manhattan took on board said vessel at said foreign ports three hundred and sixty-five passengers, with intent to bring such passengers to the United States, and having left said places with said passengers in said vessel, did, on the 24th day of November, 1867, bring the same in said vessel into the port of the city of New York; and that during said voyage the berths of said passengers in said vessel were constructed and occupied as in the second article herein is charged, contrary to the said section of the act aforesaid; whereby a forfeiture, as charged in the third article herein, did then and there accrue; and that the total amount thereby forfeited for said last-mentioned voyage is ten thousand nine hundred and eighty dollars.

4 And the said attorney of the United States, in behalf of the United States, saith that all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court; and that by reason thereof, and by force of the statute in such case made and provided, the said sums, amounting to one hundred and twenty-five thousand eight hundred & fifty dollars, became and are a lien on the said vessel, and that the said vessel thereby became and is liable to be libelled therefor in this court.

Wherefore he prays that due process issue in that behalf as well of attachment to bring the said steamship, &c., within the custody of the court, as of monition of all parties in interest to appear on the return of such proceeds, and duly intervene herein by claim and plea to the premises, and due proceedings being had thereon, that for the causes aforesaid for the forfeiture, be entered in favor of the United States against the said master and owner or owners of the said vessel, for the said amount of one hundred and twenty-five thousand eight hundred and fifty dollars and for costs, and further directing that the said steamship Manhattan, her engines, tackle, apparel, and furniture be duly sold to satisfy the lien aforesaid, and the costs of this proceeding; and that the proceeds of such sale, or such other disposition of the said vessel as the said court shall direct, be distributed according to law; and for such other and further order in the premises as to the court shall seem just.

SAMUEL G. COURTNEY,
United States Attorney for the Southern District of New York.

(Indorsed:) 21—537. United States district court. The United States vs. the steamship Manhattan, her engines, &c. Libel of information. §2, March 3, 1855. S. G. Courtney, U. S. attorney.

Filed Dec. 3d, 1867.

5 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the marshal of the southern district of New York, greeting:

Whereas a libel of information hath been filed in the district [SEAL.] court of the United States for the southern district of New York, on the 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by S. G. Courtney, esq., U. S. district attorney, on behalf of the United States of America, against the steamship "Manhattan," her engines, &c., for claims amounting to one hundred & twenty-five thousand eight hundred and fifty dollars (violation of §2, act March 3, 1855), for the reasons and causes in the said libel of information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship Manhattan, her engines, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said steamship Manhattan, her engines, &c., may, for the causes in the said libel of information mentioned, be condemned as forfeited to the use of the United States:

You are therefore hereby commanded to attach the said steamship Manhattan, her engines, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel of information, that they be and appear before the said court, to be held in and for the southern district of New York, on the 24th day of December next, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this 3d day of December, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

Clerk.

S. G. COURTNEY, *U. S. District Attorney.*

6 In obedience to the within monition, I attached the st'ship Manhattan therein described, on the 3d day of Dec., 1867, and have given due notice to all persons claiming the same that this court will, on the 24th day of Dec. inst. [inst.] (if that day shall be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY, *U. S. Marshal.*

Dated Dec. 24, 1867.

Bonded.

(Indorsed:) Vol. 21, page 537. Southern district of New York. United States district court. The United States vs. the steamship Manhattan, her engines, &c. Monition ret'ble Dec. 24th, 1867. S. G. Courtney, U. S. attorney. Pier 37 E. R., 71 Wall, & 29 B.

Filed the 24th day of December, 1867.

I thereby depute Thos. Lease to execute the within process.
Dec. 3, '67. R. MURRAY, *U. S. Marshal.*
E 131.

7 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Wednesday, the fourth day of December, in the year of our Lord one thousand eight hundred and sixty-seven:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMER MANHATTAN. } 21—537

On motion of S. P. Nash, of counsel for claimants, and after hearing the district attorney for the United States, it is ordered that the steamer Manhattan be discharged on a stipulation signed by John S. Williams, without further surety, in the amount of penalty sued for under the libel of information herein.

SAMUEL BLATCHFORD.

8 Filed the 4th day of Dec'r, 1867.

9 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on the 4th day of December, in the year of our Lord one thousand eight hundred and seven:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMSHIP MANHATTAN, HER ENGINES, &c. }

And now comes John S. Williams and Wm. H. Guion, intervening as agents for the interest of the Liverpool and Great Western Steam. Co., in the said proceedings, appears before the honorable court and makes claim to the said steamship, &c., at the same are attached by the marshal, under process of this court, at the instance of the United States district att'y; and the said John S. Williams and Wm. H. Guion aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above-named are the true and bona-fide owners of the said steamship, and that no other person is the owner thereof; and the said agents are the true and lawful bailees thereof, as above set forth; wherefore they pray to defend accordingly.

LIVERPOOL & GREAT WESTERN S. S. CO.,
By JNO. S. WILLIAMS, *Agent.*

OWEN, NASH & GREY, *Proctors for Claimants.*

10 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams, being duly sworn, deposes and says that he resides in the city of New York; that he is on of the agents of the [the] Liverpool and G. Western Steam. Co., above-named owners; that the owners of said steamship reside in England; and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

JNO. S. WILLIAMS.

Sworn to and subscribed this 4th day of December, A. D. 18 , before me.

JOHN A. OSBORN, *U. S. Commissioner.*

(Indorsed:) Vol. 21, No. 537. United States district court for the southern district of New York. The steamship Manhattan, engines, &c., asm. the United States. Owen, Nash & Grey, proctors for claimants. Claim of agent.

Filed the fourth day of December, 1867.

11 *Respondent's costs.*

District court of the United States for the southern district of New York.

Filed the 4th day of Dec'r, 1867.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel of information was filed in this court on the third day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by Samuel G. Courtney, esq., U. S. district attorney, on behalf of the United States of America, against the steamship Manhattan, her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said st'ship, her engines, &c., may be condemned & forfeited to the United States, and the parties hereto hereby consenting that in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim has been filed in said cause by John S. Williams, agent of the Liverpool Great Western Steam. Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

L'POOL & G'T WESTERN STEAM CO.,
By JNO. S. WILLIAMS, *Agent.*
JNO. S. WILLIAMS.

Taken and acknowledged this 4th day of December, 1867, before me.
JOHN A. OSBORN, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York, &c.; that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JNO. S. WILLIAMS.

Sworn to this 4th day of December, 1867, before me.
JOHN A. OSBORN, *U. S. Commissioner.*

Recorded the 4th day of December, 1867.

G. F. BETTS, *Clerk.*

12

13 District court of the United States for the southern district of New York.—In admiralty.

Filed the 4th day of Dec'r, 1867.

Stipulation entered into pursuant to the rules and practice of this court.

Whereas a libel of information was filed on the third day of December, in the year of our Lord one thousand eight hundred and sixty-seven, by

Samuel G. Courtney, esq., U. S. district attorney, on behalf of the United States of America, against the steamship "Manhattan," her engines, &c., for the reasons and causes in the said libel of information mentioned; and whereas the said steamship, her engines, &c., are in the custody of the marshal, under the process issued in pursuance of the prayer of said libel of information; and whereas it has been ordered by the court that said steamship, &c., be released from custody, on claimants filing claim & executing stipulations for costs & value, the latter in the sum of one hundred & twenty-five thousand eight hundred & fifty dollars ($125,850^{00}_{100}$), U. S. currency, as appears from said order now on file in said court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their surety, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen, Nash & Gray, esquires, proctors for the claimant of said st'ship Manhattan, &c., abide by, and pay the money awarded by, the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

L'POOL & G'T WESTERN STEAM. CO.,
By JNO. S. WILLIAMS, *Ag't.*
JNO. S. WILLIAMS.

Taken and acknowledged this 4th day of Dec'r, 1867, before me.
JOHN A. OSBORNE,
U. S. Commissioner.

14 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John S. Williams, party to the above stipulation, being duly sworn, deposes and says that he resides in the southern district of New York [$251,700^{00}$; that he resides in the]; & that he is worth the sum of two hundred & fifty-one thousand seven hundred dollars over and above all his just debts and liabilities.

JNO. S. WILSON.

Sworn to this fourth day of December, 1867, before me.
JOHN A. OSBORN,
U. S. Commissioner.

Recorded this day of , 186 .
Approved:
S. G. COURTNEY, *U. S. Att'y.*

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Wednesday, the 4th day of December, in the year of our Lord one thousand eight hundred and sixty:

Present, the Honorable Samuel Blatchford, district judge.

THE STEAMSHIP MANHATTAN, HER ENGINES, &c., *ads.* THE UNITED STATES. } 21—537.

In pursuance of the order of court made & entered herein, & the claimants having filed claim & executed stipulations for costs & value—

the latter in the amount of penalty sued for, & signed by John S. Williams as surety—& said bond being approved, on motion of S. P. Nash, esq., of counsel for claimants, it is ordered that the claimants' appearance be entered herein, & the st'ship "Manhattan," her tackle, &c., discharged from custody.

16 (Indorsed:) Vol. 21, No. 537. United States district court for the southern district of New York. The st'ship Manhattan, her engines, &c., ads. the United States. Order to discharge. S. P. Nash, of co'l for cl'm'ts.
Filed the 4th day of December, 1867.

17 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the 24th day of December, in the year of our Lord one thousand eight hundred and sixty:
Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMSHIP MANHATTAN, HER ENGINES, &c. } 21—537.

The marshall having returned the monition issued in the above entitled cause "that he had attached the st'ship Manhattan, &c., & had given due notice to all persons," &c., &c., whereupon proclamation was duly made, Messrs. Owen, Nash & Gray appear for the claimants, and on their motion, it is ordered that said claimants have one week from this date to answer herein.

18

19 U. S. district court.

THE UNITED STATES
vs.
THE STEAMSHIP "MANHATTAN," & GREAT WESTERN STEAM. COMPANY, claimants. } 31—537.

To the Honorable Samuel Blatchford, judge of the district court of United States for the southern district of New York:

The exceptions of the Liverpool and Great Western Steam. Company, to the libel of the United States against the steamship "Manhattan," her engines, &c., state and allege—
First. That the matters alleged in the said libel are not within the admiralty and maritime jurisdiction of this court.
Second. That the libel should show that the offences therein charged were committed by American citizens or on board of American vessels; whereas the said steamer "Manhattan" during all the times in the libel mentioned was and still is an English vessel, and the master and owners thereof subjects of Great Britain, and the claimants therefore allege that the matters charged in the said libel are not offences which
20 are within the jurisdiction of the courts of the United States.
Third. That the requirements of the second section of the act of Congress referred to in said libel do not apply to steamships, and that therefore the said steamship "Manhattan" is not liable for the penalties claimed in said libel.
Fourth. That by the 16th section of the said act the penalties imposed by said act are recoverable by libel in the district court only against

merchan vessels, and therefore the steamship "Manhattan," as a steam-vessel, is not liable to be proceeded against by libel for any of the matters alleged in said libel.

Fifth. That during the periods and at all the times in the libel mentioned, the said steamer "Manhattan" was wholly owned by a corporation chartered and organized under the laws of Great Britain, and was not therefore owned in whole or in part by a citizen of the United States or a citizen of a foreign country.

21 Sixth. That the said libel does not separately and distinctly propound the several alleged violations of the second section of the act of Congress, for which the said steamer is claimed to be liable, but for each of the several voyages stated in the third, fourth, sixth, seventh, eighth, & ninth articles of said libel, respectively, claims in each separate article a total of six penalties for each passengers, whereas the several alleged violations of the said second section should have been separately stated with the penalty applicable to each.

Seventh. That under the second section of the said act, the penalties recoverable are limited by the number of passengers, and a separate penalty is not recoverable for a violation of each provision of the section, wherefore the claim for any penalty beyond five dollars for each passenger mentioned in the said several 3d, 4th, 5th, 6th, 7th, 8th, & 9th articles of the said libel should be stricken therefrom.

22 Eight. That the penalties claimed against the master of said vessel, by reason of the alleged violation of the said second section of the said act, cannot by law be recollected out of the property of these claimants, are not liens against the said steamer, and the claims therefore should be stricken from the said libel.

Ninth. That the claimants herein, owners of said vessel, are not inhabitants or citizens of the United States, and the libel does not show that they have at any place, within the territorial jurisdiction of the United States, vilatated the said act, by reason whereof the penalties claimed in said libel are not recoverable against these claimants in personam, and cannot therefore be made liens upon said vessel.

Tenth. That the penalties imposed by the second section of said act are not recoverable against any vessel, unless the master shall have taken on board such vessel a greater number of passengers in proportion to the tonnage of such vessel and the spaces appropriated for

23 their use than is allowed by the first section of said act, and the said libel does not allege the taking on board of any such excess of passengers.

Eleventh. That the said libel is defective in not having been brought in personam against the master and owners of said vessel, and against the vessel simply as a security for such liability as might be established against the master and owners in personam.

Twelfth. That the said libel is in other respects informal and insufficient.

OWEN, NASH & GRAY,
Proctor for Claimants.

(Endorsed:) U. S. district court. 21—537. The United States vs. the steamship "Manhattan," her engines, &c.—the Liverpool & Great Western Steam. Company, cl'm'ts. Exceptions. Owen, Nash & Gray, proc. for cl'm'ts.

Filed Dec. 31, 1867.

24

25 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the 11th day of January, in the year of our Lord one thousand eight hundred and sixty:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMSHIP MANHATTAN, &c. } 21—537.

This cause coming on to be heard on exceptions to the libel of information herein—

Mr. S. P. Nash argues in favor of the exceptions on behalf of the cl'ts of the "Manhattan."

Mr. Simons, ass. U. S. dist. attorney, argues, on behalf of the United States, in opposition to the exceptions.

Libel of information dismissed; third exception allowed.

See decree.

26

27 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Saturday, the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

THE UNITED STATES
vs.
THE STEAMSHIP "MANHATTAN," HER ENGINES, &C.—the Liverpool and Great Western Steam. Company, cl'm'ts. } 21—537.

This cause coming on to be heard on exceptions filed to the libel herein, after hearing S. P. Nash, esq., for the claimants, and Mr. Simons, assistant dist. att'y for the United States, and due deliberation being had in the premises, it is ordered, adjudged, and decreed by the court, without passing upon any of the other, exception is well taken, and is hereby sustained, and that the libel be, and the same is hereby, dismissed.

28 SAMUEL BLATCHFORD.

29 District court of the United States for the southern district of New York.

THE UNITED STATES
vs.
THE STEAMSHIP MANHATTAN, HER ENGINES, TACKLE, apparel, and furniture.

SIR: The United States intend to appeal from the final decree of the court in this cause.

Dated Jan'y 15, 1868.

S. G. COURTNEY, *U. S. Att'y.*

To GEO. F. BETTS, Esq., *Clerk.*

(Endorsed:) U. S. district court. 21—537. The United States vs. the steamship "Manhattan," &c. Notice of appeal. S. G. Courtney. To Geo. F. Betts, esq., clerk.

Filed Jan'y 15, 1868.

30

In admiralty.—U. S. circuit court for the southern district of New York.

THE UNITED STATES, APPELLANT.
vs.
THE STEAMSHIP "MANHATTAN," HER ENGINES, &c., &c.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully shows that, on the 3d day of December, 1867, Samuel G. Courtney, the attorney of the said United States for said district, on their behalf filed a libel of information in the district court of the United States for said district against the said steamship "Manhattan," her engines, tackle, apparel, and furniture, in an alleged cause, civil and marentine, of forfeiture for violation of the passenger laws of the United States, articulately propounding—

That during certain voyages of said vessel, upon which passengers were brought within the jurisdiction of the United States from
32 certain foreign places, the berths for [for] said passengers in said vessel were not constructed and were not occupied as required by the second section of the act of Congress approved March 3d, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels," whereby the master and the owners of said vessel did severally forfeit for said provision of said section therein charged as violated, the sum of five dollars for each passenger on board on the voyage, and that the total amount thereby forfeited to the United States was $125,850 00; which sum, by virtue of the provisions of said act, became a lien on said vessel, for which said vessel was subject to be libelled in said court.

Wherefore, due process was prayed in that behalf, as well a warrant of arrest of said vessel, as of monition to all concerned in interest to appear and answer the said allegations, and that the court should decree the said forfeitures, and that said forfeiture and that said vessel should be condemned and sold to satisfy the said lien; whereupon
33 such process was issued, and said vessel arrested by virtue thereof.

That on or about December 4, 1867, the Liverpool and Great Western Steamship Company, appearing, filed their claim as sole owners of said vessel, and executed certain stipulations for costs and value, upon which said steamship was released to the said claimants from the custody of the court.

That on Dec. 31st, 1867, the said claimants filed exceptions to the said libel of information, praying that, for the various causes therein set forth, the said libel of information should be dismissed, as by reference to said exceptions will more fully appear.

That said cause came on to be heard before the Hon. Samuel Blatchford, judge of said district court, on the said libel of information and exceptions; and, upon hearing the same, the said court adjudge the third exception of the said claimants, to wit, that the requirements of the second section of the act of Congress, referred to in said libel, do not apply to steamships, to be sufficient in law to bar said action, and did thereupon, for said reason, and without passing upon any
34 other of the exception interposed by said claimants as aforesaid, decree that the said libel of information be dismissed; which decree was entered and filed.

And the said appellants say that said judgment and decree of the district court herein is erroneous, and that the said libel of information

was and is good and sufficient in law, anything in the said exceptions of the said claimants contained to the contrary notwithstanding.

Wherefore the said appellants bring this appeal from the said decree to the next circuit court to be held in said district, whereon they intend to have said cause heard anew on the said libel of information and exceptions interposed thereto, and they pray that the record and proceedings in said cause may be returned to the said circuit court, and that said decree may be reversed with costs, and that such other decree may be made herein as to the said circuit court may seem just.

Dated New York, January 25th, 1868.

S. G. COURTNEY,
U. S. Attorney.

(Endorsed:) 21—537. U. S. circuit court. The United States vs. the steamship Manhattan, &c. Petition of appeal. S. G. Courtney, U. S. att'y.

We hereby admit service of a copy of the within petition of appeal. Jan'y 25, 1868.

OWEN, NASH & GRAY,
Proctors for Claimants.

Filed Jan'y 25, 1868.

35 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall, in the city of New York, on Thursday, the 28th day of May, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES
vs.
THE STEAMSHIP MANHATTAN.

The appeal in the above case from the decree of the district court coming on to be heard, Mr. Nash is heard on the part of the claim'nt & appellees.

Mr. Simons is heard on part of United States & appellants.

Cur. ado. vult.

36

37 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on the second day of October, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE UNITED STATES
vs.
THE STEAMSHIP "MANHATTAN," &C.—THE LIVERPOOL & Great Western Steam. Company, claim'ts.

This cause having been brought to a hearing upon the appeal taken by the United States from the decree of the district court entered

herein, and dated the eleventh day of January, 1868, after hearing S. G. Courtney, district attorney for the United States, and S. P. Nash, of counsel for the claimants and appellees, and due deliberation having been thereon had, it is ordered, adjudged, and decreed that the decree of the district court be, and the same is in all things hereby affirmed.

Endorsed: U. S. circuit court. The U. S. v. steamship Manhattan, &c. Decree. Owen, Nash, & Gray, cl'mts' proctors.

38 Filed Oct. 2, 1868.

39 THE UNITED STATES OF AMERICA, Appellants,
vs.
THE STEAMSHIP MANHATTAN, HER ENGINES, &c.—the Liverpool and Great Western Steam. Company, claimants & respondents.

To the honorable the Supreme Court of the United States:

The appeal of the United States of America respectfully showeth that on the 3d day of December, 1867, Samuel G. Courtney, their attorney for the southern district of New York, filed his libel of information in the district court of the United States for said southern district of New York, against the steamship Manhattan, her engines, &c., in a cause civil and maritime for the recovery of penalties alleged to have been incurred by the master and by the owners of the said Manhattan, respectively, by reason of certain violations of the second section of the act of Congress, approved March 3d, 1855, entitled "An act to regulate the carriage of passengers in steamships and other vessels," and which said penalties were alleged, by the fifteenth section of said act, to be a lien upon the said Manhattan, her engines, &c., and that the said steamship was arrested upon process issued upon said libel of information, and was discharged upon the filing of a claim, and entering
40 into stipulations therefor by the Liverpool and Great Western Steam. Company, who thereafter filed exceptive allegations to the matters in said libel of information contained, and such proceedings were had in the said cause, that on the 11th day of January, 1868, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the third exception of the said claimants to the said libel of information be sustained, and by reason thereof that the said libel of information be dismissed.

And that after such final decree, the United States duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew; and such proceedings were had in the said circuit court that, afterwards, on the 2d day of October, 1868, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed; which said decree of the circuit court is, as the appellants are advised, erroneous, and ought to be reversed.

Wherefore the appellants appeal from the whole of said decree of the said circuit court to the Supreme Court of the United States, and respectfully pray that the said decree of the said circuit court, and the libel of information, exceptive allegations, pleadings, and proceedings in the said cause, may be sent to the Supreme Court of the United
41 States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the

circuit court, and every part thereof, may be reversed, and such other decree in the premises as to the said Supreme Court shall seem just.

Dated New York, October , 1868.

S. G. COURTNEY,
U. S. Att'y for the Southern District of New York.

(Endorsed:) The United States vs. the steamship Manhattan, &c.—the Liverpool & Great Western Steam. Company, claimants. Petition of appeal. S. G. Courtney, U. S. att'y.

Filed Oct. 28. 1868.

42

43 By the Honorable Charles L. Benedict, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to the Liverpool and Great Western Steam. Company, claimants of the steamship Manhattan, her engines, &c.:

Whereas the United States of America, libellants of the steamship Manhattan, her engines, &c., have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said the Liverpool and Great Western Steam. Company; you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 28th day of October,
44 in the year 1868, and of the independence of the United States the ninety-third.

CHAS. L. BENEDICT.

Endorsed: The United States vs. the steamship Manhattan, & the Liverpool & Great Western Steam. Co., claimants. Citation on appeal. S. G. Courtney, U. S. att'y.

Due service of a copy of the within citation admitted, Oct. 28, 1868.

OWEN, NASH, & GRAY,
Att'ys for Claimants.

Filed Oct. 28, 1868.

(Indorsement on record:) S. New York, C. C. U. S. No. 506. The United States, appellants, vs. the steamship Manhattan, her engines, &c.—the Liverpool and Great Western Steam. Company, claimants.

Filed 12th October, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE UNITED STATES, *Appellants*,
vs.
THE STEAMSHIP MANHATTAN, HER ENGINES, ETC.; THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY, *Claimants*.
No. 271 80

Appeal from the Circuit Court of the United States for the Southern District of New York.

STATEMENT FOR THE UNITED STATES.

The principal question involved in this case is the same as that presented in the preceding case on the docket, No. 270. The brief filed in behalf of the United States in the latter case is accordingly respectfully submitted in behalf of the appellants in this case.

B. H. BRISTOW,
Solicitor General.

Evening Post Steam Presses, 41 Nassau St., cor. Liberty, N. Y.

U. S. Supreme Court.

THE UNITED STATES,
Appellants,

v.

THE STEAMSHIP "MANHATTAN," her Engines, etc. The Liverpool & Great Western Steam Co.,
Claimants and Appellees.

80

Brief on the part of the Claimants and Appellees.

On the 3d of December, 1867, the United States filed their libel in admiralty, in the Southern District of New York, against the Steamship "Manhattan," to recover $125,850 of penalties alleged to have been incurred by the violation by said steamer of certain provisions of the Act of Congress of March 3d, 1855, entitled "An act to regulate the carriage of passengers in Steamship's and other Vessels." The suit was brought in admiralty under a provision of the act which makes the penalties liens upon the vessel.

The alleged violations of the act, are stated in the second article of the libel, and relate to the size, construction and occupation of the berths. The libel then

alleges in seven distinct articles, as many separate voyages of the Manhattan, between the 1st of January and the 10th of November, 1867, in each of which she brought passengers to New York, "and that during such voyages the berths of said passengers in said vessel were constructed and occupied as in the second article" charged. The claim of the Government was to recover against the master five dollars, and against the owners five dollars, as for three violations of the act, namely in respect (1) to the size of the berths, (2) the want of partitions, and (3) the mode of occupation, making $30 for each passenger on each voyage.

The "Manhattan" belonged to the Liverpool and Great Western Steam Company, of Liverpool, and said Company, having appeared as claimants, (*p.* 5, *fol.* 9), filed several exceptions to the libel, (*pp.* 8, 9, *fols.* 20–23.)

The District Judge, without passing upon the other exceptions, sustained the Third, (*p.* 10, *fols* 25–27), and dismissed the libel. An appeal having been taken by the government to the Circuit Court, the views of the District Judge were sustained and the decree affirmed, (*p.* 12, *fol.* 37).

The appeal of the United States to this Court is at *p.* 13, *fols.* 39–41).

POINTS.

I.—The Third Exception to the libel raises the point that the second section of the Act of Congress does not apply to steamships. The same point is also presented by the Fourth Exception. (*p.* 8, *fol.* 20).

This second section relates to the arrangement and occupation of the berths, and an examination

of the whole Act and of the previous legislation of Congress makes it very clear that this second section does not apply to steamships.

No doubt the word "any vessel," used in the Statute, is broad enough to include a steamer. But the 10th section, extending certain provisions of the Act to vessels "propelled in whole or in part by steam," was hardly necessary, if the general language of the first and subsequent sections already included steamers.

The previous legislation of Congress had regulated ordinary vessels and steamers by distinct and separate Statutes.

The first Act relating to the number of passengers in proportion to tonnage, &c., entitled "An Act regulating passenger ships and vessels," was passed in 1819 (5 *Stat.*, 488), and was of course long before *ocean* steam navigation.

In 1819, however, an act had been passed "respecting the enrolling and licensing of steamboats" (2 *Stat*, 694), followed by an act in 1825 to authorize registers, &c., to be in the name of the President of Incorporated Companies (4 *Stat.*, 129), and in 1838 by "An Act to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam" (5 *Stat.*, 304), modified and enlarged in 1843 (5 *Stat*, 626).

Then next in order came the "Act to regulate the carriage of passengers in merchant vessels," passed in 1847. (9 *Stat.*, 127.)

A difference in description is here apparent; the Steamboat act described the subject of its provisions, as "vessels propelled in whole or in part by steam," whereas the title of the Act of 1847 calls the vessels "merchant vessels." This is of course a term that would include steamers, if it stood by itself; but the language of the next act in order, keeps up the distinction, as if the word "vessels" was not broad enough to include steamers. It is the Act of 1849,

(9 *Stat.*, 380), making "appropriations for light-houses, &c.," which by § 5 enacts regulations as to lights, &c., to be observed by "*vessels, steamboats and propellers*, navigating the northern and western lakes."

Meantime, the Passenger Act of 1847 had been amended in 1848 (9 *Stat.*, 210), so as to exempt vessels employed by the Am. Colonization Society, and again May 17th, 1848, as to ventilation, &c., (9 *Stat.*, 220), and in 1849, an Act was passed making certain vessels bound to the Pacific, subject to the laws then in force, relating to the "carriage of *passengers in merchant vessels*, sailing to and from foreign countries," &c.

In 1852 was enacted a more complete Act to provide for the better security of the lives of passengers on board of "vessels propelled in whole or in part by steam," which is the act now in force, (10 *Stat.*, 61). It is a complete revision of former Acts. It does not apply to "public vessels of the United States, or vessels of other countries." § 42.

It is the Act referred to in Sec. 10 of the Act under which this libel is filed, which is also a complete revision of the previous *Passenger* Acts, as the Act of 1852 is of the previous *Steamboat* Acts.

In the steamboat act of 1852, (sec. 9, sub. 4, p. 65,) the Inspector is in his certificate to state among other things, the number of passengers, cabin and steerage, for which the steamer has accommodations, "and in case of steamers sailing to or from any European port, or to and from any port on the Atlantic or the Pacific a distance of 1,000 miles or upwards, the number she is permitted to carry," &c., and § 10, (*p.* 69,) provides that it shall not be lawful to carry a larger number than is expressed in the certificate, under penalty of forfeiting the passage money, and $10 for each passenger in excess, and gives a remedy to passengers not supplied with proper food and suitable lodging.

These provisions, of course, superseded, to some extent, the provisions of the Passenger Act of 1847, unless it be conceded that that act did not apply to steam vessels, and would have been incongruous with those of the complete Passenger Act of 1855, when that came to be passed, but for the insertion of the 10th Section. The title of the Act of 1855, is, "An Act to regulate the carriage of passengers in steamships and other vessels"—thus making a distinction, and for the *first time* introducing *steamships* by name into the passenger acts. But still, all the sections prior to the 10th, use simply the word "vessels," the same word used in the previous passenger acts; but the 10th Section enacts: "That "the provisions, requisitions, penalties and liens of "this act relating to the *space* in vessels appropri- "ated to the use of passengers, are hereby extended "and made applicable to all spaces appropriated to "the use of steerage passengers *in vessels propelled* "*in whole or in part by steam*, and navigating from, "to and between the ports, and in manner as in "this act named, and to such vessels and to the "masters thereof; and so much of the act entitled "'An Act to amend an act entitled an act to provide "for the better security of the lives of passengers "on board of vessels propelled in whole or in part "by steam, and for other purposes,' approved August "30th, 1852, as conflicts with this act is hereby re- "pealed, and the *space* appropriated to the use of "steerage passengers in vessels so as above propelled "and navigated, is hereby subject to the supervision "and inspection of the Collector of the Customs at "any port of the United States, at which any such "vessel shall arrive, or from which she shall be "about to depart, and the same shall be examined "and reported in the same manner, and by the same "officers by the next preceding section directed to "examine and report."

The express enactment of this section that the

provisions relating to the *space* appropriated to passengers shall apply to steamers, seems plainly to exclude the idea that the provisions as to berths, ventilation, &c., shall apply: *Expressio unius est exclusio alterius.*

The provisions as to *space* are all contained in the 1st section. Even these are not made by the 10th section generally applicable to steamers, but only to the spaces appropriated "to the use of steerage passengers." In all other respects "vessels propelled in whole or in part by steam," are left to the operation of the Steamboat Acts.

The distinction, in legislative language, between "vessels" generally, and "vessels propelled in whole or in part by steam," is also kept up in the Act of 25th July, 1866. (14 *Stat.*, 227, 8, § 9.)

It is confidently insisted, therefore, that a careful review of the passenger and steamboat acts shows that the word "vessel," as used in the several passenger acts, including that of 1855, does not embrace steamers.

That this line of argument is legitimate in arriving at the true construction of the act, is very clear. In the *U. S.* vs. *An Open Boat*, (5 *Mas.*, 120,) Judge Story, by a similar process of reasoning, held that an open boat without a deck, was not a "vessel" within the non-intercourse acts of 1820, &c.

"There can be no doubt, he says, that in a general "sense a boat is a vessel, for it is a 'vehicle in which "men or goods are carried on the water,' which is "one of the definitions of a vessel given in our lexi-"cographies, and one of the definitions of a boat, "given in like manner, is, that it is 'a vessel to pass "the water in,' or 'a ship of small size.' In a nau-"tical sense it is more usually designated an open "vessel without decks. Whether the word is used "in the one sense or the other in a particular Stat-"ute must depend upon the context and object of "the Statute itself, which may, and often does

"narrow down the general import to specific classes "of cases." P. 134.

In the case before the Court, it is to be considered that the first Statutes were passed before the era of Ocean steam navigation. The language then adopted has been retained in the subsequent acts, though a class of passenger vessels has come into use propelled by a new motive power, which has made for itself a nomenclature of its own.

And to the argument for construing the Statutes applicable to each, in accordance with this distinction in nomenclature, it may be added that there are many reasons why the provisions of the Passenger Act should not apply to Ocean steamers.

They make much shorter trips than the sailing vessels; they run in competing lines, and hope to attract custom by the comforts they offer; they return periodically to the same ports, and therefore need not be subject to attachment to ensure the recovery of penalties, and they generally have large numbers of cabin passengers, and their management is thus subject to the scrutiny of an influential class.

II.—The second and fifth exceptions raise the point that the Act cannot apply to vessels owned and navigated by foreigners. The *Manhattan* is owned by an English Company, is registered under and governed by the laws of Great Britain, and is subject to the passenger laws of that country.

The offence charged, being simply a violation of the municipal law of the United States, is not punishable by our courts unless committed on American vessels, or by American citizens, or within the territorial jurisdiction of the United States.

The Statute is, doubtless, broad enough to punish the English master of an English vessel which does

not conform to its requirements, but the Courts will not enforce it in violation of international law. (1 *Kent*, 26–7, 187; *Bowy. Univ. Pub. Law*, 660–662; *Halleck Intern. Law*, 170–174; 8 *Op. of Atty. Gen.*, 73; *Mahler* v. *Trans. Co.*, 35 *N. Y. Rep.* 352: 45 *Barb.* 226; *Whitford* v. *The Panama R. R. Co.*, 23 *N. Y. R.*, 465–471; 1 *Phill. Int. L.* (361–379.)

The charge in the libel (see 3d article), is, that "on or about the 1st of January, 1867, the master of said *Manhattan took on board* at said foreign ports [Liverpool and Queenstown] 238 passengers, with intent to bring such passengers into the United States, and did, on the 14th day of January, 1867, *bring* the same in said vessel *into the port* of the City of New York; and that *during such voyage* the berths of said passengers in said vessel were constructed and occupied as in the second article of the libel charged."

Bringing passengers into the port of New York is not an offence. The object of the Statute under which the libel is filed, is not to prevent emigration but to encourage it. (*Passenger Cases*, 7 How., 283.) In these cases it was held that a State law imposing a tax of $1.00 on every passenger arriving in port was void, as tending to discourage emigration. "To encourage foreign emigration was a cherished policy of this country at the time the Constitution was adopted." (Per McLean, J., p. 401; and see opinion of Justice Wayne, pp. 412, 413; of Catron, J., pp. 441–2.)

The legislation of Congress in the Passenger Acts was intended to secure their safety and comfort *during the passage*, and the regulations for that purpose are therefore regulations intended to be operative throughout the voyage. It is a mere evasion of the law of nations, to attempt to bring what is done on the high seas throughout the

voyage, within the operation of municipal legislation, under the idea that the offence is consummated by the landing of the passengers.

In this particular the passenger acts differ from the revenue acts, the acts against the slave trade, and the like. The frauds on the customs are consummated by the illegal landing of goods. The slave trade acts are violated by the illegal landing of negros; but the landing of emigrants is not in violation of any law; it does not defraud the Government or frustrate its policy.

Congress, in the language of its statutes, has frequently lost sight of the principle, that it could not punish acts committed on the high seas by foreigners, on board foreign vessels, which were simply violations of its municipal legislation: but has also frequently recognized it.

The act for the security of passengers on steam vessels, (10 *Stat.* 61), by its express terms, does not apply to vessels of "other countries;" (*p.* 75, § 42), yet the safety of steam boilers is quite as important as the size of berths.

And see the act for the punishment of seduction on the high seas (24 March, 1860), 12 *Stat.*, 3; and the Coolie Act, (19 Feb., 1862), 12 *Stat.* 340.

For some remarks on the want of precision in the acts of Congress, in reference to the jurisdiction of offences committed on the high seas, see 1 *Kent*, 363, note (*a*).

But that the Courts will not punish such alleged offences if not within their jurisdiction, though the Act of Congress be broad enough to cover the case, is clearly held in *U. S.* v. *Palmer*, 3 *Wheat.*, 610, 630, 634, 641-2; *The Antelope*, 10 *Wheat.*, 66; 1 *Kent*, 187.

By holding that the Act of Congress does not govern English vessels, the evils aimed at will not go unpunished, for the English statute on the same subject is as stringent as our own. Before the

master leaves the foreign port, he is obliged, in order to get his clearance, to give a bond of £2,000 to answer the penalties imposed; and it certainly would be a great hardship, if a vessel owned in Great Britain, sailing under the English flag, and bringing subjects of Great Britain to our shores, should be subject to the requirements and penalties of two sets of enactments imposed by two distinct sovereignties. See the English Act of 1856, in *Maclachlan on Shipping, pp.* 303-4 and appendix.

III.—The matters alleged in the libel are not within the admiralty or maritime jurisdiction of the Court.

The proceeding is not a *seizure* for *forfeiture;* no seizure is alleged, which is essential in a libel of information properly so called. (*Betts Pr.*, 68; 2 *Pars. Mar. Law*, 538; *The Sarah*, 8 *Wheat.*, 391; *The Washington*, NELSON, J.; 4 *Blatch. C. C. Rep*, 101.)

The proceeding is on the *instance* side of the Court to recover penalties imposed on the master and owners; and the only ground for invoking the admiralty jurisdiction is, that the statute under takes to make these penalties *liens* upon the vessel.

If not a seizure, the case cannot be within the original grant of admiralty jurisdiction conferred by the words "including all seizures under laws of impost, navigation or trade of the United States," &c. (1 *Stat*, 76, 7.)

It was at first a disputed point whether this grant did not enlarge the admiralty jurisdiction beyond the constitutional limits; but the grant was sustained on the ground that the Admiralty Courts of the Colonies did, at the time of the formation of the the constitution, exercise an exchequer jurisdiction. (*La Vengeance*, 3 *Dall.*, 297; *Per* NELSON, J., in

N. J. St. Nav. Co. v. *Merch. Bank*, 6 *How.*, 344, 385–9; 1 *Kent*, 375, 377.)

But this jurisdiction applies to cases of *seizure* only. There is no warrant for saying that merely because a matter relates to revenue or navigation, it may be made a matter of admiralty jurisdiction. A penalty *in personam* never was a matter of admiralty jurisdiction in any Court or under any system which has been resorted to for ascertaining the extent of the jurisdiction conferred by the constitution.

"The District Court," says Parsons, "has, however, "no jurisdiction to enforce a lien for duties by in- "formation in admiralty, because its revenue juris- "diction by procedure *in rem.*, extends only to "seizures for forfeiture under the laws of impost, "navigation or trade. But an action at common "law may be instituted by the United States, and "in their name, in the District or in the Circuit "Court, to recover possession of goods if they have "a legal lien on them, or to recover damages for "the illegal taking or detaining them." (2 *Pars. Mar. Law*, 538.

And the following is the language of Washington, J., in this Court:

"By the 9th Section of the Judiciary Act, the "District Courts have exclusive, original cognizance "amongst other subjects, of all civil causes of ad- "miralty and maritime jurisdiction, including all "seizures under laws of impost, navigation or trade "of the United States, where the seizures are made "on waters navigable from the sea by vessels of a "specified burden within their respective districts, "as well as upon the high seas; and also of all "seizures made on land or other waters than as "aforesaid, and of all suits for penalties and forfei- "tures incurred under the laws of the United States. "They have also cognizance concurrent with the State "Courts, of all suits at common law where the "United States sue, where the matter in dispute

"exclusive of costs, amounts to the sum or value of "$100.

"Now it is not pretended that this is a civil cause "of admiralty and maritime jurisdiction; and it "has already been shown that there is no law of "the United States of impost or otherwise, to war- "rant the seizure of the teas in question, or to sub- "ject them to forfeitnre. But *even if there were* "*such a law*, the only proceeding which could have "been instituted under it, must have been to forfeit "the articles seized, and not subject them to the "payment of duties. If the case be not one of for- "feiture, we can perceive no ground upon which "the District Court could entertain a suit by way "of libel, to enforce the payment of duties.

"No jurisdiction is conferred upon that Court in "such a case, either by the above section of the "Judiciary Act, or by any other Act of Congress. "There is no doubt but that a suit at common law "might be instituted in that Court, as well as in "the Circuit Court, in the name of the United "States, founded upon their legal right to recover "the possession of goods upon which they have a "lien for duties or damages for the illegal taking or "detaining of the same. But the remedy which "has been selected is not one which can obtain the "sanction of this Court." (*U. S.* v. 350 *Chests of Tea*, 12 *Wheat.*, 486, 497.) See also *The Waterloo*, *Bl. & H.*. 114–120; *U. S.* v. *The Manhattan*, 3 *Blatchf.*, 270; *McAfee* v. *The Creole*, in the District Court of Penn. (8 *Leg. Int. Phil.*, 82.)

In all these cases, the matters were maritime in their nature, and if this was sufficient to give jurisdiction in Admiralty, the original grant of power by the Constitution and Judiciary Act was broad enough to cover it.

But if this original grant by the Constitution was not broad enough, Congress cannot by legislation enlarge it. It may explain it, regulate it, de-

fine it, but in so doing it recognizes the duty to keep within the admiralty and maritime jurisdiction conferred by the Constitution, and to simply ascertain what that was. (See *The Hine* v. *Trevor*, 4 *Wal.*, 555., approving the case of the "Genesee Chief," 12 *How.*, 457.)

Unless, then, it can be shown that a penalty imposed by municipal law for acts done on the high seas was at the time of the Constitution recoverable in admiralty, this proceeding cannot be sustained. Where the claim itself is not of admiralty jurisdiction, it cannot be made so merely by giving an admiralty form of remedy. Penalties and forfeitures are recoverable in the District Courts, but by common law procedure, not in admiralty, except in the case of *seizures at sea.*

IV.—The fifth exception raises the question whether a foreign corporation is a citizen within the meaning of this act.

That it is not a citizen within the meaning of the Constitution, is held in *Ohio & Miss. R. R. Co.*, v. *Wheeler*, 1 *Black*, 286, and see 5 *Cranch*, 61.

V.—The 23d Adm. Rule requires that the libel shall propound and articulate in distinct articles the various allegations of fact upon which the libellant relies, &c.

In this case, the second article alleges that in the matter of the berths there were several violations; how many it intends to charge cannot be known, except by computing how the gross amount of penalties claimed is figured up. It alleges that the berths were not well constructed, not separated by

partitions, and not six feet by two. Here are three violations, unless the want of partitions and the size of the berths are a mere enlargement of the allegations that they were not well constructed; in which case the two particulars in which the berths were not well constructed may make but one case of bad construction.

Then comes the allegation that they were six feet by five feet ten inches. Here the berths are too large instead of too small, but it is uncertain whether this alone is claimed to be a violation, or only in connection with the allegation that they were improperly occupied.

Each of the seven subsequent articles adopts this as a basis for claiming as penalties $30 for each passenger, but it is confidently asserted that no two lawyers reading the libel could, without consulting together, come to the same conclusion as to the method by which the pleader computes $30 of penalties for each passenger on each voyage.

This is not an *Information*, and cannot be sustained on the plea that it follows the language of the statute.

If the statute is ambiguous, the pleader must construe it; at least, he must make his allegations of fact pointedly and specifically.

If the charge is that the berths were not of the proper dimensions, that should stand by itself; or that they were not properly occupied, that should stand by itself. The one charge is to be proved by measurements, the other by a different kind of evidence. Suppose, on each trip, every passenger had a berth five feet ten inches wide instead of two feet, the penalty for overcrowding would certainly not attach, and probably not that for want of partitions.

VI.—But there can be but one penalty for violating the provisions of this section. They all have reference to the proper lodging of the passengers. A breach of any of the particulars prescribed incurs the penalty, but a breach of several does not incur several penalties. "If there be any violation of this section in any of its provisions, then the master, &c., shall forfeit and pay the sum of $5 for each passenger"—not $5 for each provision violated.

VII.—By the true construction of the act, however, this section is not violated at all, unless the vessel be overcrowded contrary to the prohibitions of section 1.

On the trip of June, 1867 (Art. 7), the *Manhattan* brought 1,094 passengers. This number is not alleged to have exceeded what she had a right to bring according to § 1. On the trip of January, 1867, she brought but 238 (Art. 3) For these there must have been room enough—some four berths apiece—if all the 1,094 had berths. Yet if there had been but 50 passengers, section 2 would have been infringed if any one berth was an inch too narrow.

This absurdity is obviated by construing "such vessels" in § 2 to mean a vessel overcrowded according to § 1. The libel construes "such vessel" to be a vessel on which the master has taken on board passengers, with intent to bring them into the United States; and without incorporating so much of sect 1, an offence could not be even colorably made out. It should have gone on with the definition; "such vessel" being one which the master has taken on board a greater number of passengers than in the proportion named.

This view is confirmed by the change of language in sections 3, 4, 5, and 7, and the manner in which the penalties for violating those sections are affixed by § 9.

VIII.—The Act under which this proceeding was taken should not be rigidly construed against shipowners. If the passengers, whose comfort is supposed to have been disregarded, were here seeking relief, all humane impulses would dictate an interpretation which would redress any real grievance. If the acts were intended to add to the revenues of the United States, there might be some color for construing them so as to subserve such purpose. But the observance of the law yields no revenue, and its violation leads chiefly to the reward of informers, (see 13 *Stat.*, 392, § 9,) a reward that can be so enormous as that claimed in the libel only on the assumption that the government officers have neglected their duty, (§§ 10 and 17 of Act of 1855,) and allowed the vessels complained of to go in and out of port without inspection and complaint, or have given their apparent approval till the accumulation of penalties was sufficient to arouse their more scrutinizing vigilance.

The claimants confidently rely on being relieved from this most oppressive proceeding by an affirmance of the decree below.

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